

the appellant, he or she shall be notified that the appeal to the Bureau of Hearings and Appeals will be dismissed by the hearings officer assigned to the case. If the revised decision is partially favorable to the appellant, the notice shall inform the appellant that the hearings officer will proceed with the portion of the appellant's case not revised in his or her favor, unless the appellant should request dismissal of the appeal.

(e) *Timely conduct of oral hearing.* The fact that a case on appeal has been referred back to the bureau which issued the initial decision in the case shall not delay the conduct of a hearing scheduled with respect to the appeal, unless the appellant agrees to a delay. If it appears that the bureau to which a case has been referred will not have completed its reconsideration of the case prior to the date of a scheduled hearing on an appeal and the appellant has not agreed to a delay in the conduct of the hearing, the hearings officer shall proceed with the hearing and the handling of the case as though the case had not been referred back to the bureau.

**§ 260.9 Final appeal from a decision of the hearings officer.**

(a) *General.* Every appellant shall have a right to a final appeal to the Railroad Retirement Board from any decision of a hearings officer by which he or she claims to be aggrieved.

(b) *Appeal from decision of hearings officer.* Final appeal from a decision of a hearings officer shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the hearings officer is mailed to the appellant at the last address furnished by him or her.

(c) *Timely filing.* The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in § 260.9(b). However, when a claimant fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the appellant had good cause for not filing the final appeal form within the time prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 260.3(d) of this chapter in determining if good cause exists.

(d) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence: *Provided, however,* that if upon final appeal to the Board the Board finds that new or better evidence is available, the Board may obtain such evidence in which event the appellant shall be advised with respect to such evidence and given an opportunity to submit rebuttal evidence and argument: *Provided further,* that in the event that pursuant to the preceding proviso, material evidence is developed which tends to show facts contrary to those found by the hearings officer, or in the event that the appellant shows that he is ready to present further material evidence, which for good reason he was not able to present to the hearings officer, the claim may be referred back to the hearings officer. Thereupon, the hearings officer shall develop additional evidence for inclusion in the record, review the entire case, and shall:

(1) Issue his or her decision on remand or

(2) Transmit the entire record to the Board together with his or her recommendation to the Board for final decision. All remand decisions are final intermediate level administrative decisions which dispose of the appeal before the Board and if an appellant is dissatisfied with a remand decision he or she must appeal that decision to the Board in the manner described in § 260.9(b).

(e) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence and argument which has been made in the handling of the case before final appeal to the Board, with such additions as may be made pursuant to this section. Further argument will not be permitted except upon

a showing by the appellant that he or she has argument to present which for valid reasons he or she was unable to present at an earlier stage or in cases in which the Board requests further elaboration of the appellant's arguments. In such cases, the further argument shall be submitted orally or in writing, as the Board may indicate in each case, and shall be subject to such restrictions as to form, subject matter, length and time as the Board may indicate to the appellant.

(f) *Issuance of decision.* The Board shall make every effort to issue a decision within 90 days after the later of:

(1) The date the final appeal is filed;

(2) The date new or better evidence is obtained in accordance with § 260.9(d) and the appellant has commented on it;

(3) The date new or better evidence is obtained in accordance with § 260.9(d) and after the close of the comment period;

(4) The date further argument submitted in accordance with § 260.9(e) is received; or

(5) The date the record is returned to the Board following referral back to the hearings officer.

(g) *Review of decisions rendered prior to appeal to Board.* The Board may, on its own motion, review or cause to be reviewed any decision issued by a subordinate official or employee under this part.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0007)

[47 FR 36809, Aug. 24, 1982, as amended at 50 FR 19523, May 9, 1985; 52 FR 11017, Apr. 6, 1987]

#### § 260.10 Determination of date of filing of appeal.

In determining whether an appeal has been made in accordance with the regulations in this part, the date of filing a duly executed appeal form prescribed by the Board shall be the date of its receipt at an office of the Board or the date of delivery for the purpose of transmission to the Board's main office in Chicago, Illinois, to any field agent specifically authorized by a regional director to receive custody thereof in the district where delivery is made, whichever date is earlier.

## PART 261—ADMINISTRATIVE FINALITY

Sec.

261.1 Reopening and revising decisions.

261.2 Conditions for reopening.

261.3 Change of legal interpretation or administrative ruling.

261.4 Decisions which shall not be reopened.

261.5 Late completion of timely investigation.

261.6 Notice of revised decision.

261.7 Effect of revised decision.

261.8 Time and place to request review of a revised decision.

261.9 Finality of findings when later claim is filed on same earnings record.

261.10 Increase in future benefits where time period for reopening has expired.

261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: 62 FR 45713, Aug. 29, 1997, unless otherwise noted.

### § 261.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions. After the expiration of the time limits for review as set forth in part 260 of this chapter, decisions of the agency may be reopened and revised under the conditions described in this part, by the bureau, office, or entity that made the earlier decision or by a bureau, office, or other entity at a higher level, which has the claim properly before it.

(b) A *final decision* as that term is used in this part means any decision of the type listed in § 260.1 of this chapter where the time limits for review as set forth in part 260 of this chapter or in the Railroad Retirement Act have expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence* as that phrase is used in this part means evidence that may reasonably be expected to affect a final decision, which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.